SUPREME COURT, U. S.

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No. 173

In the Supreme Court of the United States

OCTOBER TERM, 1968

RICHARD E. GORMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
MITCHELL ROGOVIN,
Assistant Attorney General,
JOSEPH M. HOWARD,
JOHN M. BRANT,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial petitioner was convicted of willfully failing to file individual federal income tax returns for the years 1959 through 1963 in violation of Section 7203 of the Internal Revenue Code of 1954. He was sentenced to three consecutive one year sentences and the court of appeals affirmed. (Pet. App. 1a–9a.) No substantial conflict of decisions is presented, and there is no other reason warranting further review.

1. The Seventh Circuit has previously approved, for trials commenced after August 1967, the American Law Institute instruction on insanity (R. 148)[1] that

[1] "R." refers to the printed appendix filed by petitioner in the court of appeals.

petitioner requested and was refused here. *United States* v. *Shapiro,* 383 F. 2d 680 (C.A. 7); see also, *United States* v. *Williams,* 372 F. 2d 76 (C.A. 7). Petitioner was tried in 1966, and makes no challenge to the decision of the Seventh Circuit to apply the new instruction only prospectively.

2. In no event would this case be an appropriate vehicle for establishing, as petitioner urges (Pet. 17–20), a uniform insanity instruction. At best, the only question presented is whether there was adequate evidence to warrant an insanity instruction. Compare our Memoranda in Opposition in *Ramer* v. *United States,* No. 97 Misc., this Term, and *Church* v. *United States,* No. 141 Misc., this Term.[2] As the court of appeals observed (Pet. App. 2a), such an instruction is required only where some evidence of insanity has been introduced; as that court concluded "this record fails to reveal any such proof"[3]—at most there was a show-

[2] Copies of these documents are being served on petitioner's counsel together with this memorandum.

[3] The record shows that petitioner was actively engaged in the practice of law (including many criminal tax cases) throughout the relevant years (1959 through 1963) and represented about 75 clients each year, including 20 to 30 each year in the federal courts (R. 70–74). He orally argued *James* v. *United States,* 366 U.S. 213, in this Court on November 17, 1960 (R. 79–80). He testified that from the summer of 1959 until he was acquitted in 1962 his "one overriding interest" was to exonerate himself of a bribery charge; that his office rent fell behind; but that by 1963 he "was able to pick up a great deal of that obligation" and paid all the arrears by 1964 (R. 66–67). On the basis of testimony that in 1960 petitioner, previously neat and mentally acute, became slovenly, nervous, forgetful, and unable to make rapid decisions (R. 95–99), and suffered from high blood

ing of "[i]diosyncratic behavior and irresponsibility" (Pet. App. 2a).

3. Moreover, as the court noted (Pet. App. 3a–4a), the defense objected during government cross examination directed at the question whether petitioner knew the difference between right and wrong (R. 70, 130–131), saying, "We are only going to his state of mind." The court instructed the jury that the failure to file returns must be willful ("deliberately, intentional or with wrongful purpose"); that they could not convict if petitioner's conduct was merely negligent or inadvertent; and that they could consider whether "the defendant's mental and physical condition caused the defendant to inadvertently or negligently fail to make his income tax returns." (R. 140–141.) This instruction covered the substance of the "insanity" defense, *i.e.*, petitioner's testimony that he was preoccupied with bribery charges against him, to the neglect of everything else (R. 66), and the medical testimony that people with petitioner's neurotic or anxiety condition no longer care and simply "give up" (R. 122).

4. Venue was not, as petitioner contends (Pet. 32–36), improperly laid. Petitioner's residence was either in Chicago or in suburban Oak Park, Illinois and his place of business was in Chicago. Venue was correctly

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pressure or hypertension, a psychiatrist replied to a hypothetical question by opining that petitioner had suffered from "a psychoneurotic reaction, depressive type," and that while such a person is aware of his obligations and knows right from wrong, he gives up and believes that "Nothing counts." (R. 119–124.)

laid under Section 6091(b) of the Internal Revenue Code of 1954 (Pet. App. 7a) "if his returns had to be filed with the District Director of the Internal Revenue District in Chicago." See Section 6091 of the Internal Revenue Code of 1954; cf. *Johnston* v. *United States*, 351 U.S. 215, 220; *De Cesare* v. *United States*, 356 F. 2d 107, 108 (C.A. 5). Petitioner's argument (Pet. 34–35) is that the President has not acted upon his authority (26 U.S.C. 7621(b)) to create internal revenue districts, with the result that petitioner could not be prosecuted anywhere for the offenses here involved.

By Reorganization Plan No. 1 of 1952 (17 Fed. Reg. Part 2, p. 2243) the President authorized the Secretary of the Treasury to establish new district offices. Under that authority, the Secretary on May 15, 1952, fixed the place for the filing of petitioner's returns at Chicago.[4] Since Section 7851(b)(2)(A) of the Internal Revenue Code of 1954 provides that repeal of the 1939 Code "shall not abolish, terminate, or otherwise change—(A) any internal revenue district", it is immaterial that the President has not subsequently acted on his authority to establish internal revenue districts.

[4] An office of the Director of Internal Revenue (the name was later changed to the office of the District Director—Treasury Department Order 150–26, 18 Fed. Reg. Part 3, p. 3499) was established at Chicago, Illinois, for the area of northern Illinois, including Cook County. Treasury Department Order No. 150–3, 17 Fed. Reg., Part 3, p. 4590; cf. Bureau of Internal Revenue—Organization, 11 Fed. Reg. Part 9, pp. 177A–22, 28.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
JOSEPH M. HOWARD,
JOHN M. BRANT,
Attorneys.

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